



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1997

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR97-2378

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109664.

The City of Garland (the "city") received a request for information and documents relating to the city swimming pools. You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code. Specifically, the city excepts to a portion of the request which asks for "reports filled out by guards in the cases in which EMS was called."<sup>1</sup> We have considered the exception you claim and have reviewed the information at issue.<sup>2</sup>

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is

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<sup>1</sup>We note that the city does not object to releasing information regarding Winfrey, but does object to releasing information regarding Nguyen and Turner.

<sup>2</sup>We observe that the requestor asks for other information in addition to the instant portion of the records and we presume that you have already made this information available to the requestor, if the information exists.

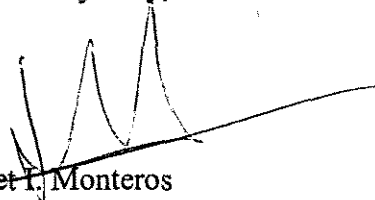
more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The city contends that there are presently two lawsuits which arise from incidents at city owned pools. The two lawsuits are styled respectively, *Ivy Winfrey Graham, et al. v. City of Garland, et al.*, Cause No. 96-01702 ( Dist. Ct. of Dallas County, 162<sup>nd</sup> Judicial Dist. of Texas, 1996) and *Thu Van Nguyen and Thoa Kim Thi Nguyen, et al. v. City of Garland*, Cause No. 95-09415 (Dist. Ct. of Dallas County, 298<sup>th</sup> Judicial Dist. of Texas, 1995). Additionally, you have shown a direct relationship between the information sought, the reports filled out by guards in the cases in which EMS was called, and the pending litigation. Open Records Decision No. 429 (1985). Therefore, we conclude that the information requested is excepted from disclosure under section 552.103(a) and must be withheld.

However, we note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref: ID# 109664

Enclosures: Submitted tape and documents

cc: Ms. Andrea Parks  
The Garland News  
613 State Street  
Garland, Texas 75040  
(w/o enclosures)